

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 47 OF 2006

BAZARKAR MANDAL MADGAUM THROUGH
ITS PRESIDENT ABHAYDINA MASURKAR ..

APPELLANT

Versus

AMRUT SHANKR VERLEKAR AND 8 ORS. ..

RESPONDENTS

Mr. S. D. Lotlikar i./b Marvin D'souza for appellant

Miss P. Naik for respondents 1 to 5

Mr. M.S. Usgaonkar, Sr. Advocate for respondents 8 & 9.

CORAM:-SMT. RANJANA DESAI, J.

DATE:- 13th July, 2006

P.C.

In this appeal the order dated 24/5/06 is challenged. Last paragraph of the said order is material;

"Thus for the discussion made herein the application of the plaintiffs for temporary injunction is dismissed. However defendant no. 4 to continue to sit at the pedestal for receiving offering of kind and cash received which be put in cash box, which cash box will be opened after every one month in presence of parties mentioned above within first four days of the month as per the convenience of the parties and the 10% of collection be removed as service charges for the person sitting at the pedestal. It may be mentioned here that this arrangement can be modified at any stage after hearing the parties."

2. Mr. Lotlikar, learned counsel appearing for the appellant contended that according to the appellant, defendant 4 is not a fit person to continue to sit at the pedestal for receiving offering. He states that he is a party to the proceedings and has rival claim against the other parties. He states that defendant 4 is not keeping proper accounts of the offerings received and, therefore, this court may appoint Receiver and direct the Receiver to appoint some fit and proper person as agent of the Receiver to collect the offerings.
3. Mr. Usgaonkar, learned counsel appearing for respondents 8 and 9 disputes the correctness of the statement made by Mr. Lotlikar. Mr. Usgaonkar states that this arrangement is made by consent of the parties. He says that in any event the learned Judge has observed in the impugned order that the arrangement made by him can be modified at any stage after hearing the parties and, therefore, appropriate direction may be given to the trial court to rehear the parties and modify the order, if found necessary.
4. In my opinion in the circumstances of the case, the following order will serve the ends of justice;
 - (a) The trial court is directed to hear the matter afresh and consider whether the arrangement made by him under the impugned order requires to be modified. The trial court will consider the prayer of defendant 1 that a Receiver needs to be appointed.
 - (b) The trial court shall pass appropriate orders after hearing all concerned.
 - © However, I wish to make it clear that I have not expressed any opinion on the contentions of both sides and all contentions of both sides are kept open;
 - (d) The trial court should finish the entire exercise within one month from the date of receipt of the order by it.
 - (e) The parties will appear before the trial court on 25/7/06 and on that day the appellant will present the necessary application. Needless to say that he will serve the copy thereof on all concerned.
5. Appeal from order is disposed of.
6. Needless to say that civil application No. 167 of 2006 is also disposed of.

(SMT. RANJANA DESAI, J.)

